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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/718,261

11/20/2003

Kirk C. Koons

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BEUSSE WOLTER SANKS MORA & MAIRE, P. A.
390 NORTH ORANGE AVENUE
SUITE 2500
ORLANDO, FL 32801

EXAMINER

HOFFMAN, MARY C

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

07/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/718,261

Applicant(s)

KOONS ET AL.

Examiner

Mary Hoffman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election of Group I in the reply filed on 05/16/2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 8-11 are cancelled by Applicant. Election was made **without** traverse in the reply filed on 05/16/2007.

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be **material to patentability** as defined in **37 CFR 1.56**.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Cole et al. (U.S. Patent No. 6,068,648).

Cole et al. a surgical tool (FIGS. 16-19) for tensioning a cable positioned around a split sternum, for crimping a ferrule around the cable, and for terminating the cable, the tool including a tensioning actuator for gripping and tensioning the cable to a predetermined tension, and a crimping actuator for crimping the ferrule onto the cable when the predetermined tension has been reached, the crimping actuator being operative to sever a free end of the cable concurrently with crimping of the ferrule, the crimping actuator including an indenter to retain the ferrule within the crimping actuator during tensioning of the cable and crimping the ferrule.

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Sauer (U.S. Patent No. 5,766,183).

Sauer disclose a surgical tool (FIGS. 15-16, 28-29) for tensioning a cable positioned around a split sternum, for crimping a ferrule around the cable, and for terminating the cable, the tool including a tensioning actuator for gripping and tensioning the cable to a predetermined tension, and a crimping actuator for crimping the ferrule onto the cable when the predetermined tension has been reached, the crimping actuator being operative to sever a free end of the cable concurrently with crimping of the ferrule, the crimping actuator including an indenter to retain the ferrule within the crimping actuator during tensioning of the cable and crimping the ferrule (col. 10, lines 49-59).

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Scruggs (U.S. Patent No. 5,345,663).

Scruggs discloses a tool (see FIGS. 1-5) comprising an elongated nosepiece extending from an end of the tool, a distal end of the nosepiece having an aperture, generally transverse to an elongate direction of the nosepiece, the aperture receiving a ferrule and allowing passage of a cable through the ferrule disposed in the aperture, the nosepiece further having a passageway extending from a proximal end of the nosepiece in the elongate direction to an intersection with the aperture; the proximal end of the nosepiece being retained in a body of the tool; a plunger, comprising an indenter, a spring, and a pushrod member having a recess for receiving the spring and the a proximal portion of the indenter, the recess allowing reciprocating motion of the indenter therein, the plunger mounted in the passageway for reciprocating motion therein, so that in a first position, a distal portion of the indenter extends into the aperture sufficiently to hold a ferrule disposed therein; a collar, attached to the indenter and slidably disposed around the nosepiece, for allowing manual movement of the indenter to a second position away from the aperture to allow insertion of a ferrule in the aperture; and an apparatus for advancing the plunger towards the aperture to compress a ferrule, disposed in the aperture, around a cable disposed through the ferrule. The tool further comprises a wheel mounted for rotation about an axis of the body substantially perpendicular to an elongate axis of the body for retaining cable wrapped around the wheel and allowing tension to be applied to the cable by rotation thereof. The pushrod member and the nosepiece comprise alignable pairs of opposed longitudinal slots

allowing longitudinal movement of a pin therethrough, the pin extending radially through the collar, the slots, and the indenter. The apparatus for advancing the plunger comprises a toggle joint having a first arm for engaging the proximal end of the plunger; and

a lever for exerting a force on a second arm of the toggle joint to urge the first arm against the plunger. The lever comprises a pivotable handle of a pliers-type hand tool.

Allowable Subject Matter

Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached PTO-892.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Hoffman whose telephone number is 571-272-5566. The examiner can normally be reached on Monday-Friday 9:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MCH

A handwritten signature in black ink, appearing to be 'mch'.A handwritten signature in black ink, appearing to be 'Eduardo C. Robert'.

EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER